UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF WEST VIRGINIA

LOCAL RULES OF PROCEDURE

effective August 1, 2006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES DISTRICT JUDGES

David A. Faber, Chief Judge, Charleston and Bluefield, West Virginia
John T. Copenhaver, Jr., Judge, Charleston, West Virginia
Joseph Robert Goodwin, Judge, Charleston, West Virginia
Robert C. Chambers, Judge, Huntington, West Virginia
Thomas E. Johnston, Judge, Beckley, West Virginia

UNITED STATES MAGISTRATE JUDGES

Maurice G. Taylor, Huntington, West Virginia
Mary E. Stanley, Charleston, West Virginia
R. Clarke VanDervort, Beckley and Bluefield, West Virginia

CLERK OF DISTRICT COURT

Teresa L. Deppner, Charleston, West Virginia

TABLE OF CONTENTS

I. LOCAL RULES OF CIVIL PROCEDURE

LR Civ P 3.1. Assignment of Cases

Cases filed shall be assigned by the clerk to a judge at the direction of the Chief Judge or through the use of random electronic methods. The clerk shall not reveal the case assignment allocation or sequence of the electronic method to anyone, unless ordered to do so by a district judge. A record of all assignments made shall be kept by the clerk.

LR Civ P 3.2. Reassignment of Cases

The clerk is authorized to sign orders to effectuate the reassignment of cases when needed and as directed by a judge of this court.

LR Civ P 3.3. Assignment of Urgent Cases or Matters

In matters requiring urgent and immediate attention by a judge and for which a district judge has not yet been assigned, such as a complaint and motion for temporary restraining order or injunctive relief, the filing party shall contact the clerk after filing the document(s). The clerk, after consulting with the Chief Judge, shall forthwith assign such urgent case or matter to an available judge in the District.

LR Civ P 3.4. Local Filing Requirements

(a) Civil docket cover sheet

A civil docket cover sheet, in a form supplied by the clerk, must be completed and submitted with any complaint commencing an action or any notice of removal from state court. Each cover sheet must cite the title and section of the United States Code or relevant statute pursuant to which the action or notice is filed.

(b) State court docket sheet

When any notice of removal from state court is filed, the filing party must also attach to the notice of removal a copy of the docket sheet

from the circuit court from which the case is being removed in addition to any other documents required by federal rule or statute.

LR Civ P 3.5. Proceedings Without Prepayment of Fees and Costs

Application to proceed without prepayment of fees and costs shall be made upon a form available from the clerk and on the court's web site.

In all cases initiated without payment of fees and costs, the affiant shall stipulate in his or her affidavit that any recovery in the action shall be paid to the clerk, who shall pay therefrom any remaining unpaid costs taxed against the plaintiff and remit the balance to the plaintiff, if *pro se*, or, otherwise, to the plaintiff and his or her attorney jointly.

LR Civ P 4.1. Waiver of Service

A plaintiff who intends to obtain service of summons on a defendant under the provisions of FR Civ P 4(d)(2) shall, within 10 business days of the filing of the complaint, dispatch the notice and request through first-class mail or other reliable means to the defendant and file a copy thereof with the clerk. If a plaintiff fails to dispatch and file the notice and request within the period specified, service of the summons shall be effectuated by means other than by waiver of service unless otherwise ordered. A plaintiff who dispatches a notice and request under the provisions of FR Civ P 4(d)(2) shall allow the defendant not less than 30 days nor more than 45 days from the date on which the notice and request is sent, or not less than 60 days nor more than 75 days from that date if the defendant is addressed outside any judicial district of the United States, within which to return the waiver of service. The plaintiff shall file the waiver of service with the clerk within 5 days after its return.

LR Civ P 4.1.1. Initiation of Civil Contempt Proceedings

A proceeding to adjudicate a person in civil contempt of court shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which the notice of motion or order to show cause is based shall state with particularity the misconduct complained of, the claim, if any, for damages, and any evidence that is available to the moving party as to the amount of damages. A reasonable attorney's fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the

alleged contemnor has appeared by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon his or her attorney; otherwise, service shall be made personally in the manner provided for by the Federal Rules of Civil Procedure for the service of a summons. If an order to show cause is sought, the order, upon a showing of necessity, may include a direction to the United States Marshal to arrest the alleged contemnor and hold him or her on bail in an amount fixed by the order, conditioned for his or her appearance at the hearing, and further conditioned that the alleged contemnor will hold himself or herself thereafter amenable to all orders of the court for his or her surrender.

LR Civ P 4.1.2. Issues; Trial by Jury

If the alleged contemnor puts in issue his or her alleged misconduct or the damages sought, he or she shall, upon demand, be entitled to have evidence taken, either before the court or before a master appointed by the court. When the alleged contemnor is entitled to a trial by jury, he or she shall make written demand therefor at least 3 days before the trial date; otherwise he or she will have waived a trial by jury.

LR Civ P 4.1.3. Order of the Court; Confinement of Contemnor

In the event the alleged contemnor is found to be in contempt of court, an order shall be entered:

(1) reciting the verdict or findings of fact upon which the adjudication is based;

(2) setting forth the amount of the damages to which the complainant is entitled;

(3) fixing the fine, if any, imposed by the court (with the fine to include the damages) and naming the person to whom the fine shall be payable;

(4) stating any other conditions necessary to purge the contempt; and

(5) directing the arrest of the contemnor by the United States Marshal and his or her confinement until the performance of the conditions in the order and the

payment of the fine, or until the contemnor is otherwise lawfully discharged.

Unless the order specifies otherwise, the place of confinement shall be in a federally approved jail facility in the area where the court is sitting. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement of the contemnor. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the judgment or fine were a final judgment.

In the event the alleged contemnor is found not guilty of the charges, he or she shall be discharged from the proceeding and, at the discretion of the court, may have judgment against the complainant for his or her costs and disbursements and a reasonable attorney's fee.

LR Civ P 5.1. Filing of Papers

Except as otherwise permitted or required by the Federal Rules, these local rules, or order, the original of all papers, not electronically filed, that must be filed with the court shall be filed at the clerk's office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, due to travel conditions, time limitations or other factors, filings may be made at any of the clerk's offices, in which event the papers so filed shall be forwarded by the receiving clerk's office to the clerk's office at the point of holding court in which the particular action or proceeding is docketed.

LR Civ P 5.2. Filing by Facsimile or Electronic Means

(a) Filing by Facsimile Transmission

The clerk's office will not accept any facsimile transmission for filing unless ordered by the court.

(b) Filing by Electronic Means

Pursuant to FR Civ. P 5(e), the clerk's office will accept pleadings or documents filed, signed or verified by electronic means that are consistent with the technical standards, if any, that the Judicial Conference of the United States establishes. A pleading or document filed by electronic means in compliance with this Rule constitutes a

written paper for the purpose of applying these Rules and the Federal Rules of Civil Procedure. All electronic filings shall be governed by the court's Administrative Procedures for Electronic Case Filing , the provisions of which are incorporated by reference, and which may be amended from time to time by the court.

LR Civ P 6.1. Definitions

For the purpose of these Local Rules of Civil Procedure, "judicial officer" means a district judge or, when authorized by a district judge, a statute, the Federal Rules of Civil Procedure, or these Local Rules of Civil Procedure, a magistrate judge.

LR Civ P 7.1. Motion Practice

(a) Motions and supporting memoranda

All motions shall be concise, shall state the relief requested precisely, shall be filed timely but not prematurely, and, except for non-dispositive motions other than a motion for sanctions, shall be accompanied by a supporting memorandum of not more than 20 pages in length, double-spaced, and by copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, and other such materials upon which the motion relies. All exhibits in support of a motion shall be attached to the motion, not the supporting memorandum. Nothing in this rule prevents a party from filing a memorandum in support of a non-dispositive motion. Examples of non-dispositive motions for which a supporting memorandum is not required unless ordered are motions for enlargement or extensions of time under FR Civ P 6, motions to amend clerical errors in pleadings, and motions to compel. A judicial officer for good cause shown may allow a supporting memorandum to exceed 20 pages. A dispositive motion or a motion for sanctions unsupported by a memorandum will be denied without prejudice. When electronically filing documents with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any motion, memorandum, response, or reply, together with documents in support thereof, is 50 pages or more in length, or where any administrative record is 75 pages or more in length.

(b) Motions to dismiss

Motions to dismiss shall be given priority status provided they are designated prominently as a motion to dismiss and filed as a separate pleading.

(c) Memoranda in response to motions and reply memoranda

Memoranda and other materials in response to motions shall be filed and served on opposing counsel and unrepresented parties within 14 calendar days from the date of service of the motion, as required by FR Civ P 5(b). Any reply memoranda shall be filed and served on opposing counsel and unrepresented parties within 7 business days from the date of service of the memorandum in response to the motion. Surreply memoranda shall not be filed except by leave of court. These times for serving memoranda may be modified by the judicial officer to whom the motion is addressed. When electronically filing a memorandum with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any memorandum, together with documents in support thereof, is 50 pages or more in length.

(d) Referral to magistrate judge

Non-dispositive discovery and pretrial motions relating to discovery practice are referred to a magistrate judge unless otherwise ordered by the district judge assigned to the case. All other non-dispositive motions and any dispositive motion may be referred to a magistrate judge by the district judge assigned to the case.

(e) Action on motions

All motions shall be decided expeditiously to facilitate compliance with the deadlines established by the scheduling order. Failure of a judicial officer to rule on a dispositive motion may be good cause for modification of a scheduling order upon motion of a party. District judges may impose time limits on referred motions and monitor those time limits.

(f) Courtroom technology

If any courtroom technology is required for a hearing, counsel must request any such technology by filing a certification that the court's technology staff has been notified. The certification regarding such

notification shall be filed with the clerk no later than 5 business days before the scheduled commencement of the hearing.

LR Civ P 9.1. Scope and Assignment

(a) Scope

These rules apply to actions in which an individual seeks district court review of a final decision of the Commissioner of Social Security (Commissioner), pursuant to 42 U.S.C. § 405(g).

(b) Appeals of Social Security claims

When an appeal of a Social Security claim is filed, it will be referred to the magistrate judge. The clerk will provide to each party and/or attorney a "Consent to Proceed Before U.S. Magistrate Judge" form along with a notice to return the completed consent form within 20 days. If the United States Attorney offers to consent in all Social Security appeals by providing the clerk with a letter to that effect, it will not be necessary for the Commissioner of Social Security to complete the consent form; a copy of the letter will be placed in the file when the plaintiff's consent is filed. When the parties in a Social Security appeal consent to proceed before a magistrate judge, it is not necessary for a district judge to sign an order of reference.

LR Civ P 9.2. Initiation of Action

Complaint

A plaintiff shall file a complaint to initiate an action to seek review of a final decision of the Commissioner pursuant to 42 U.S.C. § 405(g) by:

(1) completing and filing the form "Complaint for Review of the Decision of the Commissioner of Social Security" appended to these Rules, or

(2) filing a complaint that contains the following information:

(A) the street address, city, county, and state of the plaintiff's residence;

(B) the plaintiff's Social Security number(s), date(s) of birth, names of minor children (with cases involving children under age eighteen, both the parent or guardian and the child claimant);

(C) the date of the decision of the Appeals Council;

(D) an allegation that the decision of the Commissioner is not supported by substantial evidence and/or a description of other error alleged by the plaintiff;

(E) a demand for the specific relief claimed; and

(F) the address, telephone, facsimile number, and e-mail address of plaintiff's attorney.

If the plaintiff is not represented by an attorney, the plaintiff shall also provide the plaintiff's telephone number and facsimile number and e-mail address, if any.

LR Civ P 9.3. Commissioner's Response

(a) Filing and service

No later than 60 days after the plaintiff serves the summons and complaint, the Commissioner shall file and serve on the plaintiff either:

(1) a motion and memorandum in support as described in LR Civ P 9.5(a)(1), or

(2) an answer alleging generally that the Commissioner's decision is supported by substantial evidence and a certified copy of the administrative transcript.

The motion or answer shall include the name, telephone number, facsimile number, and e-mail address of the Assistant United States Attorney who is responsible for the case.

(b) Privacy

Social Security cases will be available only to the court and to the parties through their counsel via the court's remote electronic filing

system. Social Security files are still available at the courthouse in their entirety to the general public.

(c) Form

Social Security case documents are exempt from the court's civil case redaction requirements.

(d) Discovery

Discovery is not permitted in these cases.

(e) Material defect in administrative transcript

If a party discovers an omission from, improper submission with, or other similar defect in the administrative transcript, the party may notify the court and opposing party by filing a motion to correct the transcript. Upon a finding that a defect in the transcript is material, the court may enter an order requiring the defendant to file a supplemental certified administrative transcript. Deadlines for filing briefs will run from the date of filing of the certified administrative transcript or the supplemental certified administrative transcript, whichever occurs last.

LR Civ P 9.4. Briefs

(a) Time for filing and service

The plaintiff shall file and serve a brief in support of the complaint no later than 30 days after the date of service of the certified (or supplemental) administrative transcript. The Commissioner shall file and serve a brief in support of the defendant's decision no later than 30 days after the date of service of the plaintiff's brief. The plaintiff may file and serve a reply brief no later than 10 business days after the date of service of the Commissioner's brief.

(b) Form of briefs

The plaintiff's brief shall contain a statement of issues, a statement of the facts, and an argument on each issue asserted. The statement of facts shall cite by transcript page number to the evidence on which the plaintiff relies. The argument on each issue shall identify the findings which are alleged not to be supported by substantial evidence, and

other errors which are alleged to have been made, with citations to the pertinent transcript pages and to relevant regulations, rulings, and cases. The Commissioner's brief shall contain a statement of facts and an argument in response to each issue raised by the plaintiff. Opening and responding briefs shall not exceed 20 double-spaced pages and the reply brief shall not exceed 10 double-spaced pages, except with leave of court. Neither a table of contents nor a table of authorities is required.

LR Civ P 9.5. Motions to Dismiss or Remand

(a) Time for filing by Commissioner

No later than 60 days after the plaintiff serves the summons and complaint, the Commissioner may file and serve either:

(1) a motion to dismiss pursuant to FR Civ P 12 and memorandum in support, or

(2) a motion to remand to the Commissioner for further action pursuant to either sentence four or sentence six of 42 U.S.C. § 405(g).

(b) Time for filing by plaintiff

After the Commissioner has filed and served an answer and certified administrative transcript, the plaintiff may file and serve a motion to remand under sentence six of 42 U.S.C. § 405(g) and a memorandum in support of such motion, based on presentation of new and material evidence.

(c) Briefs

The time periods for filing and serving responses and replies to motions to dismiss or to remand are the same as for briefs.

LR Civ P 9.6. Petition or Motion for Attorney's Fees

The time limits set forth in FR Civ P 54(d) do not apply to petitions or motions for attorney's fees in Social Security cases. If the plaintiff seeks attorney's fees pursuant to the Equal Access to Justice Act, a motion for such fees shall be filed within 90 days of the entry of final judgment, pursuant to 28 U.S.C.

§ 2412(d) and served on the United States Attorney. If the plaintiff seeks attorney's fees pursuant to 42 U.S.C. § 406(b), such motion for fees shall be filed promptly after the plaintiff receives notice of the amount of past-due benefits, shall be itemized, shall be limited to the time expended in the representation of the plaintiff in federal court, and shall be served on the United States Attorney.

LR Civ P 9.7. Electronic Filing

Electronic filing of documents is preferred. A paper copy of the certified administrative transcript (and certified supplemental administrative transcript, if any), however, shall be provided by the Commissioner to the chambers of the magistrate judge assigned to the action when the answer is filed.

LR Civ P 9.8. Oral Argument

The court will generally decide Social Security appeals on the pleadings and briefs, without oral argument. A judicial officer may hear oral argument, either *sua sponte* or at the request of either party.

LR Civ P 9.9. Other Local Rules in Conflict

These Rules governing Social Security appeals take precedence over other Local Rules in conflict with them.

LR Civ P 11.1. Verification of Pleadings

Attorneys for parties in proceedings in this court shall not verify pleadings or other papers except where required by statute or rule. The court may grant exceptions to this rule for good cause. Violations of this rule will not void or impair any pleading, document or paper to the detriment of the parties.

LR Civ P 11.2. Stipulations

Unless otherwise ordered, stipulations under the Federal Rules of Civil Procedure and these Local Rules of Civil Procedure must be in writing, signed by the parties making them or their counsel, and promptly filed with the clerk.

LR Civ P 11.3. E-Government Act

All pleadings shall comply with the guidelines for E-Government Act privacy and public access which are available on the court's web site.

LR Civ P 12.1. Extensions of Answer Date

Unless otherwise ordered, the time to answer or otherwise respond to a complaint may be extended by stipulation. For purposes of LR Civ P 16.2 only, the stipulation shall constitute an appearance by any defendant who is a party to it. An extension by stipulation will not affect other deadlines established by the Federal Rules of Civil Procedure, these Local Rules of Civil Procedure, or the court.

LR Civ P 16.1. Scheduling Conferences

(a) Convening of scheduling conferences; removed and transferred actions

Except in actions exempted by paragraph (g) of this rule or as otherwise ordered, a judicial officer shall convene a scheduling conference as soon as practicable, but in any event within 80 days after the appearance of a defendant and within 110 days after the complaint has been served on a defendant.

By entry of an Order and Notice, a judicial officer shall establish the date, time, and place of the scheduling conference, and inform the parties of their right to consent to proceed before a magistrate judge under FR Civ P 73(b). As soon as practicable, but in no event later than 5 business days after the appearance of a defendant, the clerk shall transmit a notice of the conference to all counsel then of record and to each then unrepresented party for whom an address is available from the record. The notice shall also establish the date by which a meeting of the parties must be held pursuant to FR Civ P 26(f) and paragraph (b) of this rule, and the date by which a written report on the meeting of the parties must be submitted to the court pursuant to FR Civ P 26(f) and paragraph (c) of this rule.

In a case removed or transferred to this court, a judicial officer shall convene a scheduling conference as soon as practicable, but in no event later than 60 days after removal or transfer. The notice required under this paragraph shall be transmitted to all parties or their

attorneys no later than 5 business days after the case is removed or transferred.

(b) Obligation of the parties to meet

The parties shall, as soon as practicable and in any event at least 21 days before the date set for the scheduling conference, meet in person or by telephone to discuss and report on all FR Civ P 16 and 26(f) matters, and to:

(1) consider, consistent with paragraph (d) of this rule, whether the case is complex and appropriate for monitoring in an individualized and case-specific manner through one or more case-management conferences, and, if it is, to propose for the court's consideration 3 alternative dates and times for the first conference;

(2) agree, if they can, upon the disputed facts that have been alleged with particularity in the pleadings;

(3) consider consenting to trial by a magistrate judge; and

(4) consider alternative dispute resolution processes such as the one in LR Civ P 16.6.

Counsel and all unrepresented parties who have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, agreeing on matters to be considered at the scheduling conference, and considering a prompt settlement or resolution of the case.

(c) Written report on the meeting of the parties; cancellation of scheduling conference

Counsel and all unrepresented parties who were present or represented at the meeting are jointly responsible for submitting to the court, no later than 14 days before the date set for the scheduling conference, a written report on their meeting. The written report submitted by the parties shall follow a form available from the clerk and on the court's web site.

In the report on the meeting, any matters on which the parties differ shall be set forth separately and explained. The parties' proposed

pretrial schedule and plan of discovery and disclosures shall advise the court of their best estimates of the time needed to accomplish specified pretrial steps.

The parties' report on their meeting shall be considered by the judicial officer as advisory only. If, after the date fixed for filing the written report, the judicial officer determines that the scheduling conference is not necessary, it may be cancelled and the scheduling order may be entered.

(d) Conduct of scheduling conferences

Except in a case in which a scheduling conference has been cancelled pursuant to paragraph (c) of this rule, a judicial officer shall convene a scheduling conference, which may be held by telephone, within the mandatory time frame specified in paragraph (a) of this rule regardless of whether the parties have met pursuant to paragraph (b) of this rule or filed a written report pursuant to paragraph (c) of this rule.

At the scheduling conference, the judicial officer shall consider any written report submitted by the parties and discuss with them time limits and other matters they were obligated to consider in their meeting and that may be addressed in the scheduling order.

At or following the scheduling conference if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, the judicial officer shall determine whether the case is complex or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judicial officer shall consider assigning in the scheduling order any case so categorized to a case-management conference or series of conferences under LR Civ P 16.2. If the case is so assigned, the scheduling order, notwithstanding paragraph (e) of this rule, may be limited to establishing time limits and addressing other matters that should not await the first case-management conference. The factors to be considered by the judicial officer in determining whether the case is complex include:

(1) the complexity of the issues, the number of parties, the difficulty of the legal questions and the uniqueness of proof problems;

(2) the amount of time reasonably needed by the parties and their attorneys to prepare the case for trial;

(3) the judicial and other resources required and available for the preparation and disposition of the case;

(4) whether the case belongs to those categories of cases that involve little or no discovery,

(i) ordinarily require little or no additional judicial intervention, or

(ii) generally fall into identifiable and easily managed patterns;

(5) the extent to which individualized and case-specific treatment will promote the goal of reducing cost and delay; and

(6) whether the public interest requires that the case receive more intense judicial attention.

(e) Scheduling orders

Following the scheduling conference, if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant, the judicial officer shall enter a scheduling order pursuant to FR Civ P 16(b).

(f) Modification of scheduling order

(1) Time limits in the scheduling order for the joinder of other parties, amendment of pleadings, filing of motions, and completion of discovery, and dates for conferences before trial, a final pretrial conference, and trial may be modified for good cause by order.

(2) Subject to subparagraph (3), stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the parties making them or their counsel, filed promptly with the clerk, and do not affect the trial date or other dates and deadlines specified in subparagraph (1).

(3) A private agreement to extend discovery beyond the discovery completion date in the scheduling order will be respected by the court if the extension does not affect the trial date or other dates and deadlines specified in subparagraph (1). A discovery dispute arising from a private agreement to extend discovery beyond the discovery completion date need not, however, be resolved by the court.

(g) Categories of actions exempted

In addition to those actions and proceedings identified in FR Civ P 81 to which the Federal Rules of Civil Procedure do not apply, the following categories of actions are exempted from the requirements of FR Civ P 16(b), 26(a)(1)-(4) and 26(f), and of the Local Rules of Civil Procedure relating thereto unless otherwise ordered:

(1) habeas corpus cases and motions attacking a federal sentence;

(2) procedures and hearings involving recalcitrant witnesses before federal courts or grand juries pursuant to 28 U.S.C. § 1826;

(3) actions for injunctive relief;

(4) review of administrative rulings;

(5) Social Security cases;

(6) prisoner petitions pursuant to 42 U.S.C. § 1983 and "Bivens-type" actions in which plaintiff is unrepresented by counsel;

(7) condemnation actions;

(8) bankruptcy proceedings appealed to this court;

(9) collection and forfeiture cases in which the United States is plaintiff and the defendant is unrepresented by counsel;

(10) Freedom of Information Act proceedings;

(11) certain cases involving the assertion of a right under the Constitution of the United States or a federal statute, if good cause for exemption is shown;

(12) post-judgment enforcement proceedings and debtor examinations;

(13) enforcement or vacation of arbitration awards;

(14) civil forfeiture actions;

(15) student loan collection cases;

(16) actions which present purely legal issues, require no resolution of factual issues, and which may be submitted on the pleadings, motions and memoranda of law; and

(17) such other categories of actions as may be exempted by standing order.

LR Civ P 16.2. Case-Management Conferences in Complex Cases

(a) Conduct of case-management conferences

Case-management conferences shall be presided over by a judicial officer who, in furtherance of the scheduling order required by LR Civ P 16.1, may:

(1) explore the possibility of settlement;

(2) identify the principal issues in contention;

(3) prepare a specific discovery schedule and plan that may

(i) identify and limit the discovery available to avoid unnecessary, unduly burdensome or expensive discovery, and

(ii) sequence discovery into two or more stages, and include time limits for the completion of discovery;

(4) establish deadlines for filing motions and a schedule for their disposition;

(5) consider the bifurcation of issues for trial as set forth in FR Civ P 42(b); and

(6) explore any other matter appropriate for the management of the case.

(b) Obligation of counsel to confer

The judicial officer may require counsel and unrepresented parties to confer before a case-management conference and prepare a statement containing:

(1) an agenda of matters that any party believes should be addressed at the case-management conference; and

(2) a report of whether the case is progressing within the allotted time limits and in accord with specified pretrial steps.

This statement is to be filed no later than 3 business days before the case-management conference.

(c) Number of case-management conferences and conference orders

The judicial officer may convene as many case-management conferences as appropriate. After a case-management conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and may be modified in the same manner as a scheduling order under LR Civ P 16.1(f).

LR Civ P 16.3. Pretrial Conferences in Non-Complex Cases

(a) Convening of pretrial conferences

In addition to any scheduling conference and the final pretrial conference, the judicial officer to whom the case is assigned for trial may convene as many pretrial conferences as the judicial officer determines will reduce cost and delay in the ultimate disposition of the

case and may require the parties to meet or confer in advance of a pretrial conference.

(b) Pretrial conference orders

After a pretrial conference, the judicial officer shall enter an order reciting the action taken. The order shall control the subsequent course of the action and may be modified in the same manner as a scheduling order under LR Civ P 16.1(f).

LR Civ P 16.4. Authority Regarding Settlement, Stipulations and Admissions at Conferences

At least one of the attorneys for each party and all unrepresented parties participating in any conference before trial shall have authority to make decisions as to settlement, stipulations and admissions on all matters that the participants reasonably anticipate may be discussed.

LR Civ P 16.5. Sanctions

Counsel and parties are subject to sanctions for failures and lack of preparation specified in FR Civ P16(f) respecting pretrial conferences or orders and are subject to the payment of reasonable expenses, including attorneys fees, as provided in FR Civ P 37(g) for failure to participate in good faith in the development and submission of a proposed discovery plan as required by FR Civ P 26(f) and LR Civ 16.1.

LR Civ P 16.6. Mediation

(a) Cases to be mediated

The judicial officer may order mediation *sua sponte* or at the request of any party. When so ordered, the following provisions of this local rule shall control. The Southern District of West Virginia also supports the voluntary use of alternative dispute resolution and will endeavor to facilitate mediation or similar proceedings when the presiding judicial officer finds a request to do so appropriate and timely. The parties are free to engage in mediation without court involvement so long as it does not interfere with court-ordered deadlines.

(b) Motion for exception to mandatory mediation

An attorney or a *pro se* party may file a motion for leave not to engage in mediation. The presiding judicial officer may grant the motion for good cause shown.

LR Civ P 16.6.1. Timing of Mediation

Mediation shall take place at any time ordered by the court. The parties may consult with each other and agree upon a mutually convenient date, time, and place for the mediation and ask the court to approve such arrangements.

LR Civ P 16.6.2. Selection of Mediator; Notice of Nomination

The parties are expected to agree upon a mediator, the amount of the mediator's fee, and the responsibility for payment. Not later than 7 days before the date set for mediation, or as otherwise directed by the court, the parties shall file a notice of nomination with the clerk, setting forth the name, address, telephone number, facsimile number, and e-mail address of the nominated mediator. The form "Notice of Nomination," available from the clerk and on the court's web site, shall be used. If the parties are unable to agree on a mediator, then the parties shall promptly notify the presiding judicial officer, who shall without delay appoint a mediator, set the amount of the mediator's fee, and assign responsibility for payment. The parties may request that a judicial officer (who is not the presiding judicial officer) conduct the mediation. Such requests are particularly appropriate in complex cases or in cases in which a party is financially unable to bear its proportionate share of the mediation expense.

LR Civ P 16.6.3. Appointment of Mediator

Upon the filing of a Notice of Nomination, or upon selection of a mediator by the presiding judicial officer, an Order Appointing Mediator will be entered, using the form available from the clerk and on the court's web site.

LR Civ P 16.6.4. Attendance at Mediation

Unless the court directs otherwise, the following persons shall attend the entire mediation in person: (a) all lead trial counsel; and (b) any party who is prosecuting a claim (i.e., the plaintiff(s) and any defendant who has made a

counterclaim, cross-claim, or third-party complaint). Unless the court directs otherwise, any other party or his/her/its representative who is knowledgeable about the facts of the case, and who has full authority to negotiate on behalf of the party and to approve or recommend a settlement, shall attend the entire mediation in person or, with prior approval of the judicial officer, by telephone or other electronic means such as video-conference.

LR Civ P 16.6.5. Mediation Statements; Confidentiality

The mediator may require the submission of written mediation statements. If the mediator does not require submission of written mediation statements, any party may submit a written mediation statement. Mediation statements submitted in writing to the mediator are confidential. Oral statements made during the mediation are confidential.

LR Civ P 16.6.6. Impartiality of Mediator

A mediator shall not serve in a case in which the mediator's impartiality might reasonably be questioned. Possible conflicts of interest shall be promptly disclosed by the mediator to counsel and *pro se* parties.

LR Civ P 16.6.7. Compensation of Mediator

Mediators will be compensated at the rate established when the mediator was selected, with payment as agreed by the parties or ordered by the presiding judicial officer.

LR Civ P 16.6.8. Notification to Judicial Officer; Report of Mediator

Immediately upon the completion of mediation resulting in the settlement of all or part of a case, the parties shall notify the chambers of the presiding judicial officers. Within 5 business days of the close of mediation, the mediator will file with the clerk a report which states that all or part of the case was settled (specifying which part of the case settled) or that it was not settled. If all or part of the case was settled, the parties shall, at the mediation, place in writing the terms of the settlement, and all participants shall sign the terms of the settlement, with the mediator retaining the original. Within 30 calendar days of the mediation, the parties shall submit to the

chambers of the presiding judicial officer, an agreed order of dismissal as to all or part of the case that was settled.

LR Civ P 16.7. Final Pretrial and Settlement Conferences; Pretrial Order

(a) Obligation of counsel to meet; pretrial disclosures under FR Civ P 26(a)(3)

Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel and unrepresented parties shall meet no later than 21 days before the date of the final pretrial conference to conduct settlement negotiations. Lead counsel for the plaintiff first named in the complaint shall take the initiative in scheduling the meeting. If the action is not settled, and if there is no order or stipulation to the contrary, counsel and unrepresented parties shall make all FR Civ P 26(a)(3) disclosures at the meeting. The parties shall prepare a proposed pretrial order for submission to the judicial officer. Counsel and unrepresented parties must be prepared at the final pretrial conference to certify that they tried in their meeting to settle the case.

(b) Proposed pretrial order

Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel and unrepresented parties shall file, no later than 3 business days prior to the final pretrial conference, a proposed pretrial order setting forth:

(1) the pre-trial disclosures required by FR Civ P 26(a)(3) and any objections thereto;

(2) contested issues of law requiring a ruling before trial;

(3) a realistic and brief statement by counsel for plaintiff(s) and third-party plaintiff(s) of essential elements which must be proved to establish any meritorious claim remaining for adjudication and the damages or relief sought, accompanied by supporting legal authorities; and by counsel for defendant(s) and third-party defendant(s) of essential elements which must be proved to establish any meritorious defense(s), accompanied by supporting legal authorities.

Corresponding statements must also be included for counterclaims and cross-claims;

(4) in all cases, for each party, a brief summary of the material facts and theories of liability or defense;

(5) in all cases, for each party, a single listing of the contested issues of fact; and a single listing of the contested issues of law, together with case and statutory citations;

(6) stipulations;

(7) suggestions for the avoidance of unnecessary proof and cumulative evidence;

(8) suggestions concerning any need for adopting special procedures for managing potentially difficult or protracted aspects of the trial that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems;

(9) a list of special voir dire questions, if any, that counsel request be asked of the jury panel;

(10) a statement setting forth a realistic estimate of the number of trial days required;

(11) any courtroom technology requested for use at trial and a certification that the court's technology staff has been notified regarding such use no later than 5 business days before the scheduled commencement of trial; and

(12) any other matters relevant for pretrial discussion or disposition, including those set forth in FR Civ P 16.

(c) Final pretrial conference

The judicial officer to whom the case is assigned for trial shall preside at the final pretrial conference. The final pretrial conference shall be attended by unrepresented parties and by lead trial counsel for each represented party rather than "by at least one of the attorneys who will conduct the trial for each of the parties" as provided in FR Civ P 16(d). Individuals with full authority to settle the case for each party shall be present in person or immediately available by telephone. The agenda

of the final pretrial conference shall include consideration of those matters in the proposed pretrial order and any other appropriate matter, including those set forth in FR Civ P 16(c) and (d).

(d) Final pretrial order

Following the final pretrial conference, the judicial officer shall enter a final pretrial order, which shall be modified only to prevent manifest injustice.

(e) Final settlement conference

Unless otherwise ordered, a final settlement conference shall be held in each case. The conference shall be conducted by the judicial officer and attended by unrepresented parties and lead trial counsel for each represented party. Individuals with full authority to settle the case for each party shall be present in person or otherwise available as the court permits.

(f) Settlement before trial

All fees and juror costs shall be imposed upon the parties unless counsel have notified the court and the clerk's office of any settlement not later than 3:00 p.m. of the last business day before trial. The costs shall be assessed equally against the parties and their counsel unless otherwise ordered.

LR Civ P 26.1. Control of Discovery

(a) Initial disclosures under FR Civ P 26(a)(1)

Unless otherwise ordered or stipulated by the parties, the disclosures required under FR Civ P 26(a)(1) shall be made no later than 30 days after the meeting required under FR Civ P 26(f).

(b) Disclosures under FR Civ P 26(a)(2) regarding experts

Unless otherwise ordered or stipulated by the parties, the making, sequence, and timing of disclosures under FR Civ P 26(a)(2) will be as follows:

(1) the party bearing the burden of proof on an issue shall make the disclosures required by FR Civ P 26(a)(2)(A)

and (B) for that issue to all other parties or their counsel no later than 60 days prior to the discovery completion date;

(2) the party not bearing the burden of proof on an issue shall make the disclosures required by FR Civ P 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than 30 days prior to the discovery completion date; and

(3) all parties shall provide no later than 10 days prior to the discovery completion date the disclosures required by FR Civ P 26(a)(2)(A) and (B) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under FR Civ P 26(a)(2)(B).

The disclosures described in FR Civ P 26(a)(2)(B) shall not be required of physicians and other medical providers who examined or treated a party or party's decedent unless the examination was for the sole purpose of providing expert testimony in the case.

(c) Further discovery

After the opportunities for discovery pursuant to the Federal Rules of Civil Procedure, stipulation of the parties, or order have been exhausted, any requests that the parties may make for additional depositions, interrogatories, or requests for admissions shall be by discovery motion.

The judicial officer shall not consider any discovery motion under this rule unless it is accompanied by a certification that the moving party has made a reasonable and good-faith effort to reach agreement with counsel or unrepresented parties opposing the further discovery sought by the motion.

LR Civ P 26.2. Uniform Definitions in Discovery Requests

(a) Incorporation by reference and limitations

The full text of the definitions set forth in paragraph (c) of this rule is incorporated by reference into all discovery requests under FR Civ P 26(a)(5), but shall not preclude:

(1) the definition of other terms specific to the particular case;

(2) the use of abbreviations; or

(3) a narrower definition of a term defined in paragraph (c).

(b) Effect on scope of discovery

This rule does not broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure or these Local Rules.

(c) Definitions

The following definitions apply to all discovery requests:

(1) "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise);

(2) "document" is synonymous in meaning and equal in scope to the usage of this term in FR Civ P 34(a). A draft or non-identical copy is a separate document;

(3) "identify" when referring to a person means to give, to the extent known, the person's full name and present or last known address. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person;

(4) "identify" when referring to documents means to give, to the extent known, the

(i) type of document,

(ii) general subject matter,

(iii) author(s), addressee(s), and recipient(s), and

(iv) date the document was prepared;

(5) "plaintiff," "defendant," a party's full or abbreviated name, or a pronoun referring to a party, mean the party, and, where applicable, its officers, directors, employees, and partners. This definition does not impose a

discovery obligation on any person who is not a party to the case;

(6) "person" means any natural person or any business, legal or governmental entity or association; and

(7) "concerning" means referring to, describing, evidencing, or constituting.

LR Civ P 26.3. Court Filings and Costs

(a) Non-filing of discovery materials other than certificates of service

Disclosures pursuant to FR Civ P 26(a)(1), (2) and (3), depositions upon oral examination or written questions, notices of receipt of depositions, interrogatories, requests pursuant to FR Civ P 34, requests for admissions, and answers and responses thereto shall not be filed unless ordered or required under these Local Rules of Civil Procedure. Certificates of service of discovery materials shall be filed. Unless otherwise stipulated or ordered, the party taking a deposition or obtaining any material through discovery is responsible for its custody, preservation and delivery to the court if needed or ordered, and the responsibility shall not terminate upon dismissal of any party while the action is still pending. The custodial responsibility of the dismissed party may be discharged by stipulation of the parties to transfer the custody of the discovered material to one or more of the remaining parties. If for any reason a party or concerned citizen believes that any of the named documents should be filed, an *ex parte* request may be made that the document be filed, stating the reasons therefor. The court may also order filing *sua sponte*. If relief is sought under FR Civ P 26(c) or 37, copies of the relevant portions of disputed documents shall be filed with any motion. If the moving party under FR Civ P 56 or the opponent relies on discovery documents, copies of the pertinent parts shall be filed with the motion or opposition.

(b) Inspection of documents and copying expense

(1) Inspection of documents. Except as otherwise provided in an order pursuant to FR Civ P 26(c), all parties to an action shall be entitled to inspect documents produced by another party pursuant to FR Civ P 33(d) or 34 at the location where they are produced.

(2) Copies of documents. Except as otherwise provided in an order pursuant to FR Civ P 26(c), upon request of any party, and upon that party's agreement to pay the reasonable copying costs at the time of delivery, a party who produces documents pursuant to FR Civ P 33(d) or 34 shall provide copies of all or any specified part of the documents. No party shall be entitled to obtain copies of documents produced by another party pursuant to FR Civ P 33(d) or 34 without paying the reasonable copying costs. Parties are encouraged, but not required, to provide copies of documents in electronic format.

LR Civ P 26.4 Protective Orders and Sealed Documents

(a) Protective Orders

If a party, or parties jointly, seek entry of a protective order to shield information from dissemination, the movant or movants must demonstrate with specificity that (1) the information qualifies for protection under FR Civ P 26(c), and (2) good cause exists for restricting dissemination on the ground that harm would result from its disclosure.

(b) Sealed Documents

(1) General: The rule requiring public inspection of court documents is necessary to allow interested parties to judge the court's work product in the cases assigned to it. The rule may be abrogated only in exceptional circumstances.

(2) Submission: Unless otherwise authorized by law, a motion to seal shall be accompanied by a memorandum of law which contains:

(A) the reasons why sealing is necessary, including the reasons why alternatives to sealing, such as redaction, are inadequate;

(B) the requested duration of the proposed seal; and

(C) a discussion of the propriety of sealing, giving due regard to the parameters of the common law and First Amendment rights of access as interpreted by the Supreme Court and our court of appeals.

LR Civ P 33.1. Interrogatories

(a) Form of response

Each answer, statement or objection shall be preceded by the interrogatory to which it responds.

(b) Reference to Records

Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in FR Civ P 33(d):

(1) the producing party shall make available any computerized information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise not subject to discovery;

(2) the producing party shall provide any relevant compilations, abstracts, or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise not subject to discovery;

(3) the documents shall be made available for inspection and copying within 14 days after service of the answers to interrogatories or at a date agreed upon by the parties; and

(4) If a party answers an interrogatory by reference to a deposition in the action, the party shall identify the deponent and the pages of specific transcripts where the answer may be found. If a party answers an interrogatory by reference to a deposition in another action, the party shall identify the deponent, the date of deposition, the style of the action, the pages of a specific transcript where the answer may be found and shall make the deposition available for inspection and copying.

(c) Answers to interrogatories following objections

When it is ordered that interrogatories to which objections were made must be answered, the answers shall be served within 14 days of the order, unless the court directs or the parties stipulate otherwise.

LR Civ P 34.1. Document Production

(a) Form of response

Each answer, statement, or objection shall be preceded by the request to which it responds.

(b) Objections to document requests

(1) When an objection is made to any document request or sub-part, it shall state with specificity all grounds for the objection. Any ground not stated in an objection within the time provided by the FR Civ P 34, or within any extensions of time, is waived.

(2) No part of a document request shall be left unanswered because an objection was interposed to another part of the document request.

(c) Answers to document requests following objections

When it is ordered that document requests to which objections were made must be answered, the answers shall be served within 14 days of the order, unless the court directs or the parties stipulate otherwise.

LR Civ P 36.1. Admissions

(a) Form of response

Each answer, statement or objection shall be preceded by the request for admission to which it responds.

(b) Statements in response to requests for admission following objections

When it is ordered that a request for admission to which objections were made is proper, the matter shall be deemed admitted unless within 14 days of the order the party to whom the request was directed serves a statement denying the matter or setting forth the reasons why that party cannot admit or deny the matter, as provided in FR Civ P 36.

LR Civ P 37.1. Discovery Disputes

(a) Objections to disclosures or discovery

Objections to disclosures or discovery that are not filed within the response time allowed by the Federal Rules of Civil Procedure, the scheduling order(s), or stipulation of the parties pursuant to FR Civ P 29, whichever governs, are waived unless otherwise ordered for good cause shown. Objections shall comply with FR Civ P 26(g) and any claim of privilege or objection shall comply with FR Civ P 26(b)(5).

(b) Duty to confer

Before filing any discovery motion, including any motion for sanctions or for a protective order, counsel for each party shall make a good faith effort to confer in person or by telephone to narrow the areas of disagreement to the greatest possible extent. It shall be the responsibility of counsel for the moving party to arrange for the meeting.

(c) Motions to compel

A motion to compel disclosure or discovery must be accompanied by a statement setting forth verbatim each discovery request or disclosure requirement and any response thereto to which an exception is taken. In addition, the movant may include a statement of the grounds and pertinent authorities relied upon and shall file such a statement if requested by the court. If the discovery request or disclosure requirement is ignored, the movant need only file a motion to compel without setting forth verbatim the discovery request or disclosure requirement. Motions to compel or other motions in aid of discovery not filed within 30 days after the discovery response or disclosure requirement was due are waived, and in no event provide an excuse, good cause or reason to delay trial or modify the scheduling order.

(d) Telephonic conferences during discovery events

If a dispute arises during a discovery event, the parties must attempt in good faith to resolve the matter without judicial intervention. If a good faith conferral fails to resolve the dispute and if its disposition during the discovery event is likely to result in savings of substantial time and expense, a party or counsel may contact the chambers' staff of the magistrate judge to whom the case is assigned to request a telephone conference during the discovery event.

LR Civ P 41.1. Dismissal of Actions

When it appears in any pending civil action that the principal issues have been adjudicated or have become moot, or that the parties have shown no interest in further prosecution, the judicial officer may give notice to all counsel and unrepresented parties that the action will be dismissed 30 days after the date of the notice unless good cause for its retention on the docket is shown. In the absence of good cause shown within that period of time, the judicial officer may dismiss the action. The clerk shall transmit a copy of any order of dismissal to all counsel and unrepresented parties. This rule does not modify or affect provisions for dismissal of actions under FR Civ P 41 or any other authority.

LR Civ P 43.1. Addressing the Court; Examination of Witnesses

Attorneys and *pro se* litigants must stand and speak clearly when addressing the court. Only one attorney for each party may participate in examination and cross-examination of a witness. With the court's permission, the attorney may approach a witness to present or inquire about an exhibit.

LR Civ P 47.1. Trial Juries

(a) Examination of prospective jurors

The judicial officer shall conduct the examination of prospective jurors called to serve in civil actions. In conducting the examination, the judicial officer shall identify the parties and their respective counsel and briefly outline the nature of the action. The judicial officer shall interrogate the jurors to elicit from them whether they have any prior

knowledge of the case and what connections they may have, if any, with the parties or their attorneys. Inquiries directed to the jurors shall embrace areas and matters designed to discover basis for challenge for cause, to gain knowledge enabling an intelligent exercise of peremptory challenges, and to ascertain whether the jurors are qualified to serve in the case on trial. The judicial officer may consult with the attorneys, who may request or suggest other areas of juror interrogation. To the extent deemed proper, the judicial officer may then supplement or conclude his or her examination of the jurors.

(b) Jury lists

Names of jurors drawn for jury service from the court's qualified jury wheel may be disclosed only in accordance with the court's Jury Selection Plan, approved and made effective January 26, 2005, and as it may be modified. Jury lists prepared by the clerk shall be made available to counsel and unrepresented parties as provided in the Jury Selection Plan.

LR Civ P 48.1. Contact with Jurors

After conclusion of a trial, no party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury, including alternate jurors who were dismissed prior to deliberations, about the jury's deliberations or verdict without first applying for (with notice to all other parties) and obtaining for good cause an order allowing such communication.

LR Civ P 51.1. Cases to be Tried by Jury; Proposed Jury Instructions

Not less than 3 business days prior to the trial date, counsel and unrepresented parties shall, in jury cases, submit to the judicial officer proposed jury instructions with supporting statutory and case authority, special interrogatories, and a verdict form. Counsel and unrepresented parties shall exchange copies of the proposed instructions, special interrogatories and verdict form prior to their submission to the judicial officer. Submissions pursuant to this local rule shall not be filed and made a part of the record unless ordered by the judicial officer.

LR Civ P 52.1. Cases to be Tried by the Court; Proposed Findings of Fact and Conclusions of Law

Within 7 business days after the final pretrial conference, counsel and unrepresented parties shall submit to the judicial officer proposed findings of fact and conclusions of law for cases to be tried to the court. Counsel and unrepresented parties shall exchange copies of the proposals prior to submission to the judicial officer. The suggested findings of fact should contain a detailed listing of the relevant and material facts that the party intends to prove. They should not be in formal language, but should be in simple narrative form. The proposed conclusions of law should contain a full discussion of the principles of law relied upon, with statutory and case citations.

Submissions pursuant to this local rule shall not be filed and made a part of the record unless ordered by the judicial officer.

LR Civ P 54.1. Fees and Costs

Fees and costs shall be taxed and paid in accordance with the provisions of 28 U.S.C. §§ 1911-1929, and other controlling statutes and rules. If costs are awarded, the reasonable premiums or expenses paid on any bond or other security given by the prevailing party shall be taxed as part of the costs.

The prevailing party shall prepare a bill of costs within 30 days after entry of the final judgment on the form supplied by the clerk. The bill of costs shall contain an itemized schedule of the costs and a statement signed by counsel for the prevailing party that the schedule is correct and the charges were actually and necessarily incurred. The original of the bill of costs shall be filed with the clerk and a copy served on counsel for the adverse party or on the unrepresented adverse party.

If an adverse party makes specific objections to any item of costs filed by the prevailing party, within 10 days after service of a bill of costs, the clerk shall set the matter for hearing or may assess costs based on the papers submitted.

LR Civ P 58.1. Entry of Judgments and Orders

Except for good cause, no judgment or order may be presented for entry unless it bears the signature of all counsel and unrepresented parties. This rule does not apply to judgments or orders drawn or prepared by the court.

When counsel or an unrepresented party responsible for the preparation and presentation of a judgment or order unreasonably delays or withholds its presentation, the court may proceed to enter such judgment or order.

LR Civ P 65.1.1. Approval of Bonds by the Clerk

Except in criminal cases or for supersedeas bonds pursuant to FR Civ P 62, or where another procedure is prescribed by law, the clerk may approve bonds without an order if:

(a) the amount of the bond has been fixed by prior order, local rule, or statute; and

(b) the bond is secured by

(1) the deposit of cash or obligations of the United States,

(2) the guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or

(3) the guaranty of a qualified property owner when the guaranty is accompanied by an acceptable certificate of justification.

LR Civ P 67.1. Deposits Pursuant to FR Civ P 67

In accordance with FR Civ P 67, funds paid to the clerk for deposit into the court's registry shall be placed in an interest-bearing account or instrument as ordered, and shall remain so deposited pending disposition by subsequent court order. Any order obtained by a party that directs the clerk to invest funds pursuant to 28 U.S.C. § 2041 shall provide for payment by check made payable to the Clerk, United States District Court, for deposit in a renewable time certificate, treasury bill, passbook savings account, or other secure instrument. Any order authorizing disbursement of funds on deposit shall provide for payment of the statutory administrative registry fee from the income earnings prior to any other distribution of the account. If any individual or entity receives payment of earned interest in excess of $10.00 per annum, parties shall provide identification by name, address and social security or tax identification number in compliance with Title 26 of the United States Code, and Internal Revenue Service regulations, as a condition of the release of said funds. A copy of any order affecting the deposit, investment or disbursement of funds in the court's registry shall be served on the clerk.

LR Civ P 71A.1. Land Condemnation Actions; Manner of Filing, Docketing, Recording, and Reporting

The guidelines for filing, docketing, recording and reporting land condemnation proceedings approved by the Judicial Conference of the United States are adopted for use in this jurisdiction. Copies of the guidelines are available on the court's web site.

LR Civ P 72.1. Authority of Magistrate Judges

(a) General

A magistrate judge is a judicial officer of the district court. A magistrate judge of this district is designated to perform, and may be assigned, any duty allowed by law to be performed by a magistrate judge. Performance of a duty by a magistrate judge will be governed by the applicable provisions of federal statutes and rules, the general procedural rules of this court, and the requirements specified in any order or reference from a district judge. In performing a duty, a magistrate judge may determine preliminary matters; require parties, attorneys, and witnesses to appear; require briefs, proofs, and argument; and conduct any hearing, conference, or other proceeding the magistrate judge deems appropriate.

(b) Statutory duties

Magistrate judges are authorized or specially designated to perform the duties prescribed by 28 U.S.C. § 636, and such other duties as may be assigned by the court or a district judge which are not inconsistent with the Constitution and laws of the United States.

(c) Habeas corpus and collateral relief

Magistrate judges are authorized to perform the duties imposed upon district judges by Rules for Proceedings Under 28 U.S.C. § 2254 and Rules for Proceedings Under 28 U.S.C. § 2255, in accordance with Rule 10 of those Rules and 28 U.S.C. § 636.

(d) Post-conviction habeas corpus and related actions

The following matters are referred to magistrate judges:

(1) Post-conviction habeas corpus, filed pursuant to 28 U.S.C. §§ 2241, 2254, 2255, and 18 U.S.C. § 3582(c), and related actions;

(2) Prisoner challenges to conditions of confinement, filed pursuant to 42 U.S.C. § 1983, and Bivens, and related actions;

(3) Appeals of administrative decisions under the Social Security Act, and related actions, including motions or petitions for attorney's fees arising out of such appeals;

(4) Discovery disputes and pretrial motions relating to discovery practice;

(5) Applications to proceed without prepayment of fees and costs; and

(6) Actions filed by persons who are proceeding *pro se*, whether or not they are in custody, until such person is represented by retained counsel.

(e) Miscellaneous duties

Magistrate judges are authorized to:

(1) exercise general supervision of civil calendars, conduct calendar and status calls, conduct hearings to resolve discovery disputes, and determine motions to expedite or postpone the trial of cases for the district judges;

(2) analyze civil cases to determine an appropriate schedule; report findings to the assigned district judge; and, in complex and other selected cases, conduct conferences at which a schedule for the completion of various stages of the litigation will be established, the possibility of early settlement will be evaluated, and alternative dispute resolution mechanisms will be considered;

(3) conduct pretrial conferences, scheduling conferences, mediations, settlement conferences, omnibus hearings, and related pretrial proceedings;

(4) with the consent of the parties, conduct voir dire and preside over the selection of petit juries;

(5) accept petit jury verdicts in the absence of the district judge;

(6) issue subpoenas, writs of habeas corpus ad testificandum, or other orders necessary to obtain the presence of parties, witnesses, or evidence for court proceedings;

(7) rule on applications for disclosure of tax returns and tax return information, pursuant to 26 U.S.C. § 6103(i)(1);

(8) order the exoneration or forfeiture of bonds;

(9) conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, pursuant to 46 U.S.C. §§ 4311(d) and 12309(c);

(10) determine post-judgment discovery motions and conduct examinations of judgment debtors pursuant to FR Civ P 69;

(11) supervise proceedings conducted pursuant to letters rogatory as set forth in 28 U.S.C. § 1782(a);

(12) issue orders of withdrawal of funds from the court registry pursuant to 28 U.S.C. § 2042;

(13) issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States; and

(14) conduct extradition proceedings in accordance with 18 U.S.C. § 3184; and

(15) serve with designated committees or other judicial officers, participate in promulgation of local rules and procedures, administration of the forfeiture of collateral system, and other functions of court governance as approved by the Chief Judge.

(f) Method of assignment of matters to magistrate judges

The method for assignment of duties to a magistrate judge shall be by Standing Order or case-specific order unless otherwise provided for in these Local Rules, the Federal Rules of Civil Procedure, the Rules for Proceedings Under 28 U.S.C. § 2254, and the Rules for Proceedings Under 28 U.S.C. § 2255. Individual district judges may, in their discretion, assign or request magistrate judges to perform such other duties as are not inconsistent with the Constitution and the laws of the United States.

LR Civ P 72.2. Effect of Magistrate Judge Ruling Pending Objection

When an objection to a magistrate judge's ruling on a non-dispositive pretrial motion is filed pursuant to FR Civ P 72(a), the ruling remains in full force and effect unless and until it is stayed by the magistrate judge or by a district judge.

LR Civ P 73.1. Special Designation of Magistrate Judges

(a) Consent of the parties

Upon consent of the parties, magistrate judges are specially designated by the district judges to exercise civil jurisdiction pursuant to 28 U.S.C. § 636(c)(1), and to conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case.

(b) Notice of consent option

The Order and Notice entered by a judicial officer under LR Civ P 16.1(a) shall inform the parties of their right to consent to proceed before a magistrate judge. Parties added to an action after reference to a magistrate judge shall be notified by the clerk of their right to consent to the exercise of jurisdiction by a magistrate judge. In the event an added party does not consent to the magistrate judge's jurisdiction, the action shall be returned to the district judge for further proceedings. Additional notices may be furnished by the clerk to the parties at later stages of the proceeding, and may be included with pretrial notices and instructions. The consent form may be filed at any time prior to trial; however, no civil action shall be referred to a

magistrate judge unless a district judge has signed an order of reference.

(c) Execution of consent

Any party may deliver a consent form to the clerk. An alternative and acceptable consent form is a FR Civ P 26(f) Parties' Report of Planning Meeting, signed by all parties or their counsel, which states that all parties consent to the exercise of jurisdiction by a magistrate judge. No consent form shall be made available, nor will its contents be made known to any district judge or magistrate judge, unless all parties have consented to the reference to the magistrate judge. No magistrate judge, district judge or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a district judge or magistrate judge from informing the parties that they may have the option of referring the case, or one or more case-dispositive motions, to a magistrate judge.

(d) Vacating a reference

A district judge may, on his or her own motion, or under extraordinary circumstances shown by any party, vacate the reference to a magistrate judge of a case in which the parties have filed consents.

LR Civ P 77.1. Principal Offices

The headquarters of the United States District Court for the Southern District of West Virginia and of its Clerk is located in the Robert C. Byrd United States Courthouse, Room 2400, 300 Virginia Street East, Charleston, West Virginia. The mailing address is P.O. Box 2546, Charleston, West Virginia 25329.

LR Civ P 77.2. Divisions

The Southern District of West Virginia is composed of 23 counties. Each of these counties is assigned to one of 5 administrative divisions. Each division is given the name of the city in the division where the court and offices of its clerk are located. The divisions, addresses of division offices, and counties comprising each division are as follows:

Division 1: Bluefield

Elizabeth Kee Federal Building
Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701
Mailing address: P.O. Box 4128, Bluefield, West Virginia 24701
Counties Composing Division: Mercer, Monroe and McDowell

Division 2: Charleston

Robert C. Byrd United States Courthouse
Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301
Mailing address: P.O. Box 2546, Charleston, West Virginia 25329
Counties Composing Division: Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Putnam and Roane

Division 3: Huntington

Sidney L. Christie Federal Building
Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701
Mailing address: P. O. Box 1570, Huntington, West Virginia 25716
Counties Composing Division: Cabell, Mason and Wayne

Division: 5: Beckley

Robert C. Byrd Federal Building and Courthouse,
Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801
Mailing address: P.O. Drawer 5009, Beckley, West Virginia 25801
Counties Composing Division: Fayette, Greenbrier, Summers, Raleigh and Wyoming

Division 6: Parkersburg

Federal Office Building
Address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
Mailing address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
Counties Composing Division: Wirt and Wood

The court will occasionally convene in Lewisburg to deal with matters falling within either the Beckley or Bluefield Division.

LR Civ P 77.3. Sessions

The court is considered open and in continuous session in all divisions of the district on all business days throughout the year in accordance with the provisions of 28 U.S.C. § 139, FR Civ P 77(c), FR Cr P 56, and other controlling statutes and rules.

LR Civ P 77.4. Court Library

Attorneys and other persons authorized by the court may use the court's library. Library books may not be removed from the court's premises. Persons using library books shall be responsible for their care and preservation and shall return them to their proper places in the library.

LR Civ P 78.1. Hearing On Motions

The judicial officer may require or permit hearings on motions, and the hearings may be by telephone.

LR Civ P 79.1. Custody and Disposition of Exhibits

After being marked for identification, exhibits of a documentary nature admitted in evidence or made a part of the record in any case pending or tried in this court shall be placed in the custody of the clerk unless otherwise ordered. All other exhibits, models and materials admitted in evidence that cannot be stored conveniently in the clerk's facilities shall be retained in the custody of the attorney or party producing them at trial unless otherwise ordered, and the attorney or party shall execute a receipt therefor.

A party or attorney who has custody of an exhibit shall keep it available for the use of this court or any appellate court, and shall grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding.

Upon application the court will order that documentary exhibits retained by the clerk be returned to the party to whom they belong, provided that copies approved by counsel and unrepresented parties are filed in place of the originals.

After final judgment and after the time for motion for new trial and appeal has passed, or upon the filing of a stipulation waiving and abandoning the right to appeal and to move for a new trial, the clerk is authorized, without further order, to return all exhibits in civil and bankruptcy cases to the parties or their counsel.

LR Civ P 79.2. Removal of Papers from Custody of Clerk

Papers on file in the office of the clerk shall be produced pursuant to subpoena from a court of competent jurisdiction directing their production.

Papers may be removed from the files of the clerk only upon order except that the clerk may permit temporary removal of papers by a district judge, a bankruptcy judge, a magistrate judge, or a master in matters relating to their official duties.

The person receiving the papers shall provide to the clerk a signed receipt identifying the papers removed.

LR Civ P 83.1. Admission of Attorneys

(a) Admission as member of bar of court

Any person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who is in good standing as a member of its bar, is eligible for admission as a member of the bar of this court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee.

Any person who has been subject to disciplinary suspension or disbarment by the West Virginia Supreme Court of Appeals but has been readmitted to practice by the Supreme Court and is in good standing as a member of its bar, is eligible for re-admission as a member of the bar of this court. The attorney may be re-admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person re-admitted. If the motion for re-admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorney's register, and pay the clerk the admission fee.

(b) Sponsorship of visiting attorneys by members of court

The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia.

(c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders

Any attorney employed by the United States Attorney or the Federal Public Defender for this judicial district must qualify as a member of the bar of this court within one year of his or her employment. Until so qualified, the attorney may appear and practice under the sponsorship of the appointing officer.

(d) Appearance by federal government attorneys

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR Civ P 83.2. Legal Assistance by Law Students

(a) Written consent

With the written consent of an indigent and his or her attorney of record, an eligible law student may appear on behalf of that indigent. With the written consent of the United States Attorney or his or her representative, an eligible law student may also appear on behalf of the United States. With the written consent of the Federal Public Defender, an eligible law student may appear on behalf of the Federal Public Defender. With the written consent of the Attorney General of the State of West Virginia or his or her representative, an eligible law student may also appear on behalf of the State of West Virginia. In each case in which an eligible law student appears, the consent shall be filed with the clerk.

(b) Responsibilities of attorneys of record

An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this court, but such

pleadings, briefs, or documents must be signed by the attorney of record. An eligible law student may also participate in hearings, trials, and other proceedings with leave of court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work. The attorney of record shall be familiar with the case and be prepared to supplement or correct any written or oral statement made by the law student.

(c) Eligibility requirements

To be eligible to appear pursuant to this rule, the law student must:

(1) be enrolled in a law school approved by the American Bar Association;

(2) have successfully completed legal studies for at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;

(3) be certified by the dean of his or her law school as being of good character and competent legal ability. The dean's certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the clerk in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for 18 months after it has been filed with the clerk or until the law student has been admitted as a permanent member of the bar of this court, whichever is earlier;

(4) certify in writing to the clerk that he or she has read the Code of Professional Conduct of the American Bar Association;

(5) be introduced to the court by a permanent member of the bar of this court; and

(6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from

paying compensation to the law student, nor from making appropriate charges for such services.

LR Civ P 83.3. Representation of Parties

Every party to proceedings in this court, except parties appearing *pro se*, shall be represented by a member of the bar of this court and may be represented by a Visiting Attorney and Sponsoring Attorney as provided in LR Civ P 83.1(a), 83.1(b), and 83.6. A corporation or unincorporated association cannot appear *pro se*.

LR Civ P 83.4. Termination of Representation

No attorney who has entered an appearance in any civil action shall withdraw the appearance or have it stricken from the record, except by order.

LR Civ P 83.5. *Pro se* Appearances

A party who represents himself or herself shall file with the clerk his or her complete name and address where pleadings, notices, orders, and other papers may be served on him or her, and his/her telephone number. A *pro se* party must advise the clerk promptly of any changes in name, address, and telephone number.

LR Civ P 83.6. Admission of Visiting Attorneys

(a) Procedure for admission

Any person who has not been admitted to practice before the Supreme Court of Appeals of West Virginia, but who is a member in good standing of the bar of the Supreme Court of the United States, the bar of the highest court of any other state in the United States, or the bar of the District of Columbia, shall be permitted to appear as a Visiting Attorney in a particular case in association with a Sponsoring Attorney as herein provided. The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia. The Visiting Attorney shall file with the clerk, at or before his or her initial appearance (including signing a pleading), the Statement of Visiting Attorney adopted by order of this court, which is available from the

clerk and on the court's web site, and shall pay the Visiting Attorney fee. The Statement shall designate a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served. The Sponsoring Attorney shall consent to the designation and shall thereafter sign all papers that require the signature of an attorney. Any paper filed by a Visiting Attorney not in compliance with this rule may be stricken from the record after 15 days' written notice transmitted to the Visiting Attorney at his or her address as known to the clerk. Upon compliance with this rule and introduction of the Visiting Attorney to the court by the Sponsoring Attorney, the Sponsoring Attorney, with the consent of the court, may be excused from further attendance during the proceedings and the Visiting Attorney may continue to appear in that particular case.

(b) Motion not required

Filing a properly completed Statement of Visiting Attorney and paying the Visiting Attorney fee constitute all steps necessary to qualifying as a Visiting Attorney for a particular case and no motion to appear as a Visiting Attorney is required.

(c) Payment of visiting attorney fee

(1) Fee payable to clerk. The court will charge a Visiting Attorney fee, payable to the Clerk, United States District Court, in an amount to be set by order. Pursuant to Judicial Conference policy, the fees will be used only for "purposes which inure to the benefit of the members of the bench and the bar in the administration of justice." Other than library materials, the fees will not be used to supplement appropriated funds and will not be used to pay for materials or supplies available from statutory appropriations. The fees will be placed in a fund administered by the clerk as custodian of the fund. Disbursements will be made only at the direction of a committee, the members of which will be appointed by the Chief Judge, in accordance with a written plan.

(2) West Virginia State Bar *pro hac vice fee*. The *pro hac vice* fee imposed by the Supreme Court of Appeals of West Virginia applicable to Visiting Attorneys shall be paid to The West Virginia State Bar and is not payable to the clerk of the district court.

(d) Exceptions to payment of visiting attorney fee

(1) Bankruptcy cases. The Visiting Attorney fee will apply in every bankruptcy case in which the reference to the Bankruptcy Court has been withdrawn, and in every appeal of a bankruptcy case to the District Court. Otherwise, the imposition of a Visiting Attorney fee in a bankruptcy case will be governed by the Local Rules for Bankruptcy Court.

(2) Multidistrict litigation cases. Pursuant to the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, a Visiting Attorney fee will not be charged in any case which is filed in this court pursuant to a transfer under said Rules.

(3) Miscellaneous cases. A Visiting Attorney who files a miscellaneous case which does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and from filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous case which does require judicial action (e.g., motion to compel testimony at a deposition) must comply with LR Civ P 83.6(a).

(4) Federal government attorneys. Attorneys employed by the United States Department of Justice or any other Federal department or agency will not be required to pay the Visiting Attorney fee.

(5) Law students. Law students who participate in a case in accordance with these Rules will not be charged a Visiting Attorney fee.

(e) Waiver of payment of visiting attorney fee

A Visiting Attorney and his/her Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in a particular case or cases, for good cause shown. The motion will be decided by the judge assigned to the case; the motion should be filed within 20 days of the assignment of the case to the judge. Examples of cases in which waiver may be appropriate are: numerous collection actions filed by one plaintiff; numerous negligence actions filed by one firm

representing many plaintiffs against one defendant or group of defendants arising out of a single incident or related incidents (e.g., a catastrophic fire, or exposure to a toxic substance). If a waiver is granted, the Visiting Attorney will pay such Visiting Attorney fee in an amount as ordered by the presiding district judge.

(f) Revocation of visiting attorney privilege

For good cause, the presiding district judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more specified cases.

LR Civ P 83.7. Codes of Professional Conduct

In all appearances, actions and proceedings within the jurisdiction of this court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association. Judicial officers of this court must comply with the Code of Conduct for United States Judges adopted by the Judicial Conference of the United States; judiciary employees of this court must comply with the Code of Conduct for Judicial Employees, also adopted by the Judicial Conference.

LR Civ P 83.8. Bias and Prejudice

The United States District Court for the Southern District of West Virginia aspires to achieve absolute fairness in the determination of cases and matters before it and expects the highest standards of professionalism, human decency, and considerate behavior toward others from its judicial officers, lawyers, and court personnel, as well as from all witnesses, litigants, and other persons who come before it. As to matters in issue before the court, conduct and statements toward one another must be without bias with regard to such factors as gender, race, ethnicity, religion, handicap, age, and sexual orientation when such conduct or statements bear no reasonable relationship to a good faith effort to argue or present a position on the merits. Judicial officers must ensure that appropriate action is taken to preserve a neutral and fair forum for all persons. Nothing in this local rule, however, is intended to infringe unnecessarily or improperly upon the otherwise legitimate rights, including the right of freedom of speech, of any person, nor to impede or interfere with the aggressive advocacy of causes and positions by lawyers and litigants.

LR Civ P 83.9. Opening Statements and Closing Arguments to Jury

(a) Opening Statements

At the commencement of the trial, the party upon whom rests the burden of proof may state, without argument, its claim and the evidence expected to support it. The adverse party may then state, without argument, its defense and the evidence expected to sustain it. If the trial is to the jury, the opening statements shall be made immediately after the jury is impaneled. If the trial is to the court, the opening statements shall be made immediately after the case is called for trial. Opening statements shall be subject to time limitations imposed by the assigned judicial officer. In actions involving several parties and unusual procedures, the judicial officer, after conferring with attorneys and unrepresented parties, shall direct the order and time of the opening statements in a manner appearing just and proper.

(b) Closing Arguments

The right to open and close the arguments shall belong to the party who has the burden of proof, without regard to whether the defendant offers evidence. Where each of the parties has the burden of proof on one or more issues, the judicial officer shall determine the order of arguments. In actions involving several parties and unusual procedures, the judicial officer, after conferring with attorneys for the parties, shall determine the order of arguments in a manner appearing just and proper. Arguments shall be subject to time limitations imposed by the judicial officer, giving due consideration to the length of the trial, the number of witnesses and exhibits, the complexity of issues, and the nature of the case.

The opening argument of plaintiff before the jury shall be a fair statement of plaintiff's case and shall consume at least one-half of the entire time allotted to plaintiff's counsel for opening argument. In the event that one-half of the allotted time is not used, one-half shall nevertheless be charged by the judicial officer to plaintiff's opening argument.

After plaintiff's opening argument, counsel for defendant may elect to argue the case or may decline. If counsel for defendant declines to present argument, the case will be submitted without further argument by plaintiff and defendant.

LR Civ P 83.10. Photography in and Broadcasting From the Courtroom

The taking of photographs in the courtroom, or in the corridors immediately adjacent, during judicial proceedings or during any recess, and the transmitting or sound recording of proceedings for broadcast by radio or television, is not permitted. Upon approval of the court and under its supervision, proceedings, other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, presentation of portraits, naturalization proceedings, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom.

LR Civ P 83.11. Impoundment of Photography and Broadcasting Equipment

The United States Marshal may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Civ P 83.10. The impounded equipment shall be returned to its owner or its custodian after the proceedings have concluded.

LR Civ P 83.12. Scheduling Conflicts

All scheduling conflicts with West Virginia state courts will be resolved pursuant to the provisions of West Virginia Trial Court 5.

LR Civ P 83.13. Referral of Cases to Bankruptcy Court

Pursuant to 28 U.S.C. § 157(a), all cases under Title 11, and all proceedings arising under Title 11 or arising in or related to a case under Title 11, are referred to the Bankruptcy Court for disposition. Filings in bankruptcy actions shall be made directly with the Clerk of the Bankruptcy Court. Requests to withdraw this reference shall be filed with the Clerk of the Bankruptcy Court, who will transmit the motion to withdraw reference to the Clerk of the District Court. See FR Br P 5011, Advisory Committee Note (1987).

LR Civ P 83.14. Appeal of a Bankruptcy Court Judgment, Order, or Decree to the District Court

A notice of appeal from a judgment, order, or decree of a bankruptcy judge to the district court shall be filed with the Clerk of the Bankruptcy Court pursuant to Part VIII of the Federal Rules of Bankruptcy Procedure. The Clerk of the Bankruptcy Court shall transmit to the Clerk of the District Court the notice of appeal, the record designation and statement of issues, and the record. On receipt of the transmission, the Clerk of the District Court shall enter the appeal on the docket, establish a briefing schedule, and notice the parties of the date on which the appeal was docketed and of the time for filing supporting memoranda.

II. Local Rules of Criminal Procedure

LR Cr P 5.1.1. Pretrial Services Interview

Pretrial services officers (or probation officers acting in the capacity of pretrial services officers), to the extent practicable, shall attempt notification of counsel prior to conducting pretrial services interviews. If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request, in accordance with LR Cr P 5.1.2.

LR Cr P 5.1.2. Disclosure of Pretrial Services Information

A written pretrial services report will, if possible, be provided to counsel in the courtroom when a defendant makes an initial appearance, and will be provided to counsel in the courtroom when a defendant appears for a detention hearing. Pretrial services information is confidential, pursuant to the provisions of 18 U.S.C. § 3153(c) and regulations promulgated by the Administrative Office of the United States Courts. Judicial officers may disclose pretrial services information, in whole or in part, upon a showing of good cause. When a demand for disclosure of pretrial services information regarding a defendant is made by service of a subpoena or other judicial process upon a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the subpoena.

LR Cr P 5.1.3. Modification of Conditions of Pretrial Release

The pretrial services or probation officer may, in the exercise of his/her discretion, meet with the defendant and defense counsel and modify conditions of release. Following such meeting, if any, a Consent to Modify Conditions of Release (PS 42) shall be completed and submitted to the judicial officer for signature and filing.

LR Cr P 7.1. Assignment of Cases

Cases filed shall be assigned by the clerk to a judge at the direction of the Chief Judge or through the use of random electronic methods. The clerk shall not reveal the case assignment allocation or sequence of the electronic method to anyone, unless ordered to do so by a district judge. A record of all assignments made shall be kept by the clerk.

LR Cr P 7.2. Reassignment of Cases

The clerk is authorized to sign orders to reassign cases when needed and as directed by a judge of this court.

LR Cr P 10.1. Arraignments and Plea

(a) Notice of Date and Time

The attorney for the government shall timely notify the defendant of the date and time of defendant's arraignment and plea to an indictment. The government attorney shall furnish a copy of the notice concurrently to defendant's counsel if counsel's name and address are shown on the docket or known to the government. When the indictment is based on substantially similar allegations that form the basis of an earlier complaint before a magistrate judge, the government attorney shall notify counsel who appeared for defendant before the magistrate judge of the date and time of the arraignment. If a defendant is without counsel, the government attorney shall promptly notify the appropriate judicial officer of that fact, so early provision of counsel may be considered.

(b) Notice of motion to dismiss

The government attorney shall serve on the defendant's counsel or on an unrepresented defendant a notice of a motion to dismiss a complaint pending before a judicial officer.

(c) No further notice

No other or further notice of arraignment and plea or motion to dismiss need be given by the clerk except on order of the court.

LR Cr P 12.1. Pretrial Motions

(a) Date for filing pretrial motions in lieu of standard request for discovery

If a defendant does not elect to use the standard request for discovery, the magistrate judge shall, at arraignment, set a

date within 20 days of arraignment for filing defendant's pretrial motions.

(b) Date for filing pretrial motions in addition to standard request for discovery

If defendant elects to use the standard request for discovery, defendant must file any additional pretrial motions (i.e., non-discovery) by the date established in the Arraignment Order and Standard Discovery Request Form available from the clerk and on the court's website.

(c) Time for response to pretrial motions

The government has 7 days to respond to motions filed by defendant under paragraphs (a) and (b) of this rule.

(d) Pretrial hearing

The pretrial hearing will be held at least 14 days prior to trial, unless otherwise ordered by the court *sua sponte* or on motion for good cause. If the parties agree a hearing is not necessary, they must inform the district judge immediately. If the pretrial hearing requires the taking of evidence, the parties must notify the district judge in advance.

(e) Courtroom technology

If any courtroom technology is required , counsel must request any such technology for use at trial or other proceeding and make a certification that the court's technology staff has been notified. The certification regarding such notification shall be filed with the clerk no later than 5 business days before the scheduled commencement of the trial or other proceeding.

LR Cr P 16.1. Arraignment and Standard Discovery Requests

(a) Standard discovery request form

At arraignment on an indictment, or on an information or complaint in a misdemeanor case, counsel for the defendant and the government may make standard requests for discovery as contained in the Arraignment Order and Standard Discovery

Request form available from the clerk and on the court's website. The form shall be signed by counsel for the defendant and the government and entered by the magistrate judge.

(b) Reciprocal discovery

If counsel for the defendant requests discovery under FR Cr P 16(a)(1)(E), (F) or (G), in an Arraignment Order and Discovery Request form, the defendant is obligated to provide any reciprocal discovery that may be available to the government under FR Cr P 16(b)(1)(A), (B) or (C).

(c) Time for government response

Unless the parties agree otherwise, or the court so orders, within 10 days of the Standard Discovery Request, the government must provide the requested material to counsel for the defendant and file with the clerk a written response to each of defendant's requests.

(d) Time for reciprocal discovery response

Defendant must provide all reciprocal discovery due the government within 10 days of receiving the materials and the filing and serving of responses in paragraph (c).

(e) Defense discovery request deemed speedy trial motion

Any request made by the defendant pursuant to this rule will be deemed a motion under the provisions of the Speedy Trial Act, 18 U.S.C. § 3161.

(f) Duty to supplement

All duties of disclosure and discovery in this rule are continuing. The parties must produce any additional discovery as soon as they receive it, and in no event later than the time for such disclosure as required by law, rule of criminal procedure, or order of the court, and without the necessity of further request by the opposing party.

LR Cr P 18.1. Principal Offices

The headquarters of the United States District Court for the Southern District of West Virginia and its Clerk is located in the Robert C. Byrd United States Courthouse, Room 2400, 300 Virginia Street East, Charleston, West Virginia. The mailing address is P.O. Box 2546, Charleston, West Virginia 25329.

LR Cr P 18.2. Divisions

The Southern District of West Virginia is composed of 23 counties. Each of these counties is assigned to 1 of 5 administrative divisions. Each division is given the name of the city in the division where the court and offices of its clerk are located. The divisions, addresses of division offices, and counties comprising each division are as follows:

Division 1: Bluefield

Elizabeth Kee Federal Building
Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701
Mailing address: P.O. Box 4128, Bluefield, West Virginia 24701
Counties Composing Division: Mercer, Monroe and McDowell

Division 2: Charleston

Robert C. Byrd United States Courthouse
Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301
Mailing address: P.O. Box 2546, Charleston, West Virginia 25329
Counties Composing Division: Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Putnam and Roane

Division 3: Huntington

Sidney L. Christie Federal Building
Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701
Mailing address: P.O. Box 1570, Huntington, West Virginia 25716
Counties Composing Division: Cabell, Mason and Wayne

Division: 5: Beckley

Robert C. Byrd Federal Building and Courthouse,
Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801
Mailing address: P.O. Drawer 5009, Beckley, West Virginia 25801
Counties Composing Division: Fayette, Greenbrier, Summers, Raleigh and Wyoming

Division 6: Parkersburg

Federal Office Building
Address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
Mailing address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
Counties Composing Division: Wirt and Wood

The court will occasionally convene in Lewisburg to deal with matters falling within either the Beckley or Bluefield Division.

LR Cr P 23.1. Opening Statements in Criminal Trials

At the commencement of trial in a criminal action, the government and the defendant may make non-argumentative opening statements as to their theories of the case and the manner in which they expect to offer their evidence. If the trial is to a jury, the opening statements shall be made immediately after the jury is empaneled, and, if the trial is to the court, the opening statements shall be made immediately after the case is called for trial; but, for good cause shown, the court, on request of the defendant, may defer the opening statement for a defendant until the time for commencing presentation of that defendant's direct evidence. Opening statements shall be subject to time limitations imposed by the court. If the action involves more than one defendant, the court, after conferring with the parties to the action, shall determine the order and time of the opening statements.

LR Cr P 26.1. Addressing the Court; Examination of Witnesses

Attorneys and pro se litigants must stand and speak clearly when addressing the court. Only one attorney for each party may participate in examination and cross-examination of a witness. With the court's permission, the attorney may approach a witness to present or inquire about an exhibit.

LR Cr P 30.1. Jury Instructions

In all criminal cases, counsel for the defendant and for the government shall submit jury instructions to the court prior to the commencement of a jury trial, or earlier if ordered by the court. When it is necessary for counsel for the defendant to submit one or more jury instructions on an ex parte basis, those instructions must be disclosed to the government no later than the charge conference or when specified by the court. Subject to court approval, counsel may amend or supplement jury instructions after commencement of trial.

LR Cr P 31.1. Contact with Jurors

After conclusion of a trial, no party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury, including alternate jurors who were dismissed prior to deliberations, about the jury's deliberations or verdict without first applying for (with notice to all other parties) and obtaining, for good cause, an order allowing such communication.

LR Cr P 32.1. Presentence Interview

Probation officers shall notify counsel, prior to conducting the presentence interview of the defendant, of the date, time and place of the interview. If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request in accordance with LR Cr P 32.2.

LR Cr P 32.2. Disclosure of Presentence Reports and Probation Records

(a) Disclosure of presentence reports

Disclosure of presentence reports is governed by 18 U.S.C. § 3552(d) and FR Cr P 32. Except as specifically provided by statute, rule, regulation, or guideline promulgated by the Administrative Office of the United States Courts, or LR Cr P 32.3, no confidential records of the court maintained by the probation office, including presentence reports and probation or supervised release records, shall be producible except by written petition to the court, particularizing the need for specific information. When a demand for disclosure of presentence and probation records is made by way of subpoena or other judicial process to a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the subpoena. No disclosure shall be made except upon order of the court.

(b) Disclosure of probation office recommendation

The probation officer shall not disclose to anyone other than the court the officer’s recommendation as to the sentence.

LR Cr P 32.3 Modification or Revocation of Probation or Supervised Release

(a) Petition for modification or revocation

(1) A petition for modification or revocation of probation or supervised release shall be set forth on the form adopted for that purpose by the Administrative Office of the United States. The petition shall be presented to the sentencing judge. The sentencing judge shall determine whether the petition shall be filed.

(2) The petition shall set forth the facts allegedly constituting the violation of probation or supervised release. The petition shall also seek either a summons or an arrest warrant, modification of the terms of release, or no action.

(3) A petition ordered filed shall be served upon the probationer or releasee, the attorney for the government, and last known counsel of record except that in all cases in which prior counsel was appointed pursuant to the Criminal Justice Act, the Office of the Federal Public Defender shall be served in lieu of service upon prior counsel. Unless the court orders an arrest warrant be issued, the petition shall be served upon the probationer or releasee after arrest, but in no event later than the initial appearance.

(b) Disclosure of evidence

The probation officer shall, without further request by the probationer, or releasee, or his/her counsel, disclose to the probationer or releasee or his/her counsel, all evidence against the probationer or releasee, including any potential oral statement and any potentially exculpatory material. Any information disclosed by the probation officer to an attorney for the government shall be promptly disclosed by the probation officer to probationer or releasee or to his/her counsel.

(c) Recommendation for revocation of probation or supervised release

If after a hearing the defendant is found to have violated the terms of probation or supervised release, the probation officer may make a recommendation to the court. The reasons supporting the recommendation shall be disclosed to the parties if such reasons are evidence against the probationer or releasee, as shall any response by the probation officer to recommendations by counsel.

(d) Request for modification of the terms of probation or supervised release

No terms of probation or supervised release shall be modified upon a waiver of counsel by the probationer or releasee unless and until the probationer or releasee shall have consulted with counsel regarding the advisability of waiving counsel. Any such waiver of counsel must certify that the probationer or releasee consulted with counsel prior to executing such waiver. In the alternative, waiver of counsel may be made by the probationer or releasee before a magistrate judge.

LR Cr P 44.1. Admission of Attorneys

(a) Admission as member of bar of court

Any person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who is in good standing as a member of its bar is eligible for admission as a member of the bar of this court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee.

Any person who has been subject to disciplinary suspension or disbarment by the West Virginia Supreme Court of Appeals but has been readmitted to practice by the Supreme Court and is in good standing as a member of its bar, is eligible for re-admission as a member of the bar of this court. The attorney

may be re-admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person re-admitted. If the motion for re-admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorney's register, and pay the clerk the admission fee.

(b) Sponsorship of visiting attorneys by members of court

The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia.

(c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders

Any attorney employed by the United States Attorney or the Federal Public Defender for this judicial district must qualify as a member of the bar of this court within one year of his or her employment. Until so qualified, the attorney may appear and practice under the sponsorship of the appointing officer.

(d) Appearance by federal government attorneys

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LR Cr P 44.2. Legal Assistance by Law Students

(a) Written consent

With the written consent of an indigent and his or her attorney of record, an eligible law student may appear on behalf of that indigent. With the written consent of the United States Attorney or his or her representative, an eligible law student may also appear on behalf of the United States. With the written consent of the Federal Public Defender, an eligible law student may appear on behalf of the Federal Public Defender. With the written consent of the Attorney General of the State of West Virginia or his or her representative, an eligible law student may also appear on behalf of the State of West Virginia. In each case in which an eligible law student appears, the consent shall be filed with the clerk.

(b) Responsibilities of attorneys of record

An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this court, but such pleadings, briefs, or documents must be signed by the attorney of record. An eligible law student may also participate in hearings, trials, and other proceedings with leave of court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work. The attorney of record shall be familiar with the case and be prepared to supplement or correct any written or oral statement made by the law student.

(c) Eligibility requirements

To be eligible to appear pursuant to this rule, the law student must:

(1) be enrolled in a law school approved by the American Bar Association;

(2) have successfully completed legal studies for at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;

(3) be certified by the dean of his or her law school as being of good character and competent legal

ability. The dean's certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the clerk in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for 18 months after it has been filed with the clerk or until the law student has been admitted as a permanent member of the bar of this court, whichever is earlier;

(4) certify in writing to the clerk that he or she has read the Code of Professional Conduct of the American Bar Association;

(5) be introduced to the court by a permanent member of the bar of this court; and

(6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor from making appropriate charges for such services.

LR Cr P 44.3. Representation of Parties

Every party to proceedings in this court, except parties appearing *pro se*, shall be represented by a member of the bar of this court and may be represented by a Visiting Attorney and Sponsoring Attorney as provided in these rules. A corporation or unincorporated association cannot appear *pro se*.

LR Cr P 44.4. Termination of Representation

No attorney who has entered an appearance in any criminal action shall withdraw the appearance or have it stricken from the record, except by order.

LR Cr P 44.5. *Pro se* Appearances

A party who represents himself or herself shall file with the clerk his or her complete name and address where pleadings, notices, orders, and other papers may be served on him or her, and shall include his/her telephone number. A *pro se* party must advise the clerk promptly of any changes in name, address, and telephone number.

LR Cr P 44.6. Admission of Visiting Attorneys

(a) Procedure for admission

Any person who has not been admitted to practice before the Supreme Court of Appeals of West Virginia, but who is a member in good standing of the bar of the Supreme Court of the United States, the bar of the highest court of any other state in the United States, or the bar of the District of Columbia, shall be permitted to appear as a Visiting Attorney in a particular case in association with a Sponsoring Attorney as herein provided. The Sponsoring Attorney must be a member of the bar of this court, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia. The Visiting Attorney shall file with the clerk, at or before his or her initial appearance (including signing a pleading), the Statement of Visiting Attorney adopted by order of this court, which is available from the clerk and on the court's website, and shall pay the Visiting Attorney fee. The Statement shall designate a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served. The Sponsoring Attorney shall consent to the designation and shall thereafter sign all papers that require the signature of an attorney. Any paper filed by a Visiting Attorney not in compliance with this Rule may be stricken from the record after 15 days' written notice transmitted to the Visiting Attorney at his or her address as known to the clerk. Upon compliance with this rule and introduction of the Visiting Attorney to the court by the Sponsoring Attorney, the Sponsoring Attorney, with the consent of the court, may be excused from further attendance during the proceedings and the Visiting Attorney may continue to appear in that particular case.

(b) Motion not required

Filing a properly completed Statement of Visiting Attorney and paying the Visiting Attorney fee constitute all steps necessary to qualifying as a Visiting Attorney for a particular case and no motion to appear as a Visiting Attorney is required.

(c) Payment of visiting attorney fee

(1) Fee payable to clerk

The court will charge a Visiting Attorney fee, payable to the Clerk, United States District Court, in an amount to be set by order. Pursuant to Judicial Conference policy, the fees will be used only for "purposes which inure to the benefit of the members of the bench and the bar in the administration of justice." Other than library materials, the fees will not be used to supplement appropriated funds and will not be used to pay for materials or supplies available from statutory appropriations. The fees will be placed in a fund administered by the clerk as custodian of the fund. Disbursements will be made only at the direction of a committee, the members of which will be appointed by the Chief Judge, in accordance with a written plan.

(2) West Virginia State Bar *pro hac vice fee*

The *pro hac vice* fee imposed by the Supreme Court of Appeals of West Virginia applicable to Visiting Attorneys shall be paid to The West Virginia State Bar and is not payable to the clerk of the district court.

(d) Exceptions to payment of visiting attorney fee

(1) Miscellaneous cases

A Visiting Attorney who files a miscellaneous case which does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and

from filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous case which does require judicial action (e.g., motion to compel testimony at a deposition) must comply with Rule 44.6.

(2) Federal government attorneys

Attorneys employed by the United States Department of Justice or any other Federal department or agency will not be required to pay the Visiting Attorney fee.

(3) Law students

Law students who participate in a case in accordance with these Rules will not be charged a Visiting Attorney fee .

(e) Waiver of payment of visiting attorney fee

A Visiting Attorney and his/her Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in a particular case or cases, for good cause shown. The motion will be decided by the judge assigned to the case; the motion should be filed within 20 days of the assignment of the case to the judge. If a waiver is granted, the Visiting Attorney will pay such Visiting Attorney fee in an amount as ordered by the presiding district judge.

(f) Revocation of visiting attorney privilege

For good cause, the presiding district judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more specified cases.

LR Cr P 44.7. Bias and Prejudice

The United States District Court for the Southern District of West Virginia aspires to achieve absolute fairness in the determination of cases and matters before it and expects the highest standards of professionalism, human decency, and considerate behavior toward others from its judicial officers, lawyers, and court personnel, as well as from all witnesses, litigants,

and other persons who come before it. As to matters in issue before the court, conduct and statements toward one another must be without bias with regard to such factors as gender, race, ethnicity, religion, handicap, age, and sexual orientation when such conduct or statements bear no reasonable relationship to a good faith effort to argue or present a position on the merits. Judicial officers must ensure that appropriate action is taken to preserve a neutral and fair forum for all persons. Nothing in this Local Rule, however, is intended to infringe unnecessarily or improperly upon the otherwise legitimate rights, including the right of freedom of speech, of any person, nor to impede or interfere with the aggressive advocacy of causes and positions by lawyers and litigants.

LR Cr P 49.1. Filing Papers

Except as otherwise permitted or required by the Federal Rules, these Local Rules, or order, the original of all papers not electronically filed shall be filed with the court at the clerk's office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, due to travel conditions, time limitations or other factors, filings may be made at any of the clerk's offices, in which event the papers so filed shall be forwarded by the receiving clerk's office to the clerk's office at the point of holding court in which the particular action or proceeding is docketed. When electronically filing documents with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any motion, memorandum, response, or reply, together with documents in support thereof, is 50 pages or more in length.

LR Cr P 49.2. Filing by Facsimile or Electronic Means

(a) The clerk's office will not accept any facsimile transmission for filing unless ordered by the court.

(b) Pursuant to FR Cr P 49(d), the clerk's office will accept pleadings or documents filed, signed or verified by electronic means that are consistent with the technical standards, if any, established by the Judicial Conference of the United States. A pleading or document filed by electronic means in compliance with this Rule constitutes a written paper for the purpose of applying these Rules and the Federal Rules of Criminal Procedure. All electronic filings shall be governed by the court's Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means for

Criminal Cases, the provisions of which are incorporated by reference, and which may be amended from time to time by the court.

LR Cr P 49.3. E-Government Act

All pleadings shall comply with the guidelines for E-Government Act privacy and public access which are available on the court's website.

LR Cr P 53.1. Photography in and Broadcasting From Courtroom

The taking or transmitting of photographs by any means or device in the courtroom, or in the corridors immediately adjacent, during judicial proceedings or during any recess, and the transmitting or sound recording of proceedings by radio, television, wireless device, land-line device, or other device is not permitted. Upon approval of the court and under its supervision, proceedings, other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, presentation of portraits, naturalization proceedings, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom.

LR Cr P 53.2 Impoundment of Photography and Broadcasting Equipment

The United States Marshal may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Cr P 53.1. The impounded equipment shall be returned to its owner or custodian after the proceedings have concluded.

LR Cr P 55.1. Custody and Disposition of Exhibits

(a) General rules governing custody of exhibits

After being marked for identification, exhibits of a documentary nature admitted into evidence or made a part of the record in any case pending or tried in this court shall be placed in the custody of the clerk unless otherwise ordered. All other

exhibits, models and materials admitted into evidence that cannot be stored conveniently in the clerk's facilities shall be retained in the custody of the attorney or party producing them unless otherwise ordered, and the attorney or party shall execute a receipt therefor. All exhibits admitted into evidence that are sensitive in nature (for example, controlled substances, legal or counterfeit money, firearms, materials depicting child pornography or obscenity, dangerous chemicals or devices, or contraband of any kind), shall be retained by the United States Marshal or his or her designee during the course of the hearing or trial. Following the conclusion of the hearing or trial, any sensitive exhibit shall be returned to the party who offered it.

(b) Time for retention; availability for examination or inspection

A party or attorney who has custody of an exhibit shall keep it available for the use of this court or any appellate court, until 2 years after the conclusion of the case and any direct appeal, and shall grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding as appropriate. For the purpose of this Rule, the "conclusion of the case and any direct appeal" refers to the time when a conviction becomes final for the purposes of 28 U.S.C. § 2255.

(c) Return of documentary exhibits; substitution of copies

Upon application to the court, the court may order documentary exhibits retained by the clerk be returned to the party who offered the exhibit, provided that copies approved by counsel and unrepresented parties are filed in place of the originals.

(d) Return of exhibits upon stipulation

After final judgment and 1 year after the time for motion for new trial and appeal has passed, or upon the filing of a stipulation waiving and abandoning the right to appeal and to move for a new trial, the clerk is authorized, without further order, to return all exhibits to the parties or their counsel.

LR Cr P 55.2. Removal of Papers from Custody of Clerk

Papers on file in the office of the clerk shall be produced pursuant to subpoena from a court of competent jurisdiction directing their production.

Papers may be removed from the files of the clerk only upon order except that the clerk may permit temporary removal of papers by a district court judge, bankruptcy judge, a magistrate judge, or a master in matters relating to their official duties.

The person receiving the papers shall provide to the clerk a signed receipt identifying the papers removed.

LR Cr P 56.1. Sessions

The court is considered open and in continuous session in all divisions of the district on all business days throughout the year in accordance with the provisions of 28 U.S.C. § 139, FR Cr P 56, and other controlling statutes and rules.

LR Cr P 58.1. Authority of Magistrate Judges in Misdemeanor Cases

Magistrate judges are specially designated to try persons accused of, and sentence persons convicted of, misdemeanors committed within the Southern District of West Virginia, as provided in 18 U.S.C. § 3401.

LR Cr P 58.2. Assignment of Misdemeanors and Petty Offenses

Upon the filing of an information, complaint, or violation notice, or the return of an indictment, all misdemeanor and petty offense cases shall be assigned to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and FR Cr P 58.

LR Cr P 58.3 Petty Offenses

(a) Schedule of petty offenses

The Appendix to the Local Criminal Rules contains a Schedule of Petty Offenses. The Schedule, which may be modified by the Chief Judge, lists petty offenses, as defined in 18 U.S.C. § 19, that occur within the territorial jurisdiction of the United States, whether originating under federal statute or regulation or under applicable state statute by virtue of the Assimilated Crimes Act, 18 U.S.C. § 13.

(b) Forfeiture of collateral in lieu of appearance

A defendant charged with a petty offense listed in the Schedule may post the collateral for that offense, in lieu of appearing before a magistrate judge to answer the charge, unless the offense is noted as "mandatory appearance" or the arresting or citing officer deems the offense to be "aggravated." Posting the collateral signifies that the defendant does not contest the charge or request a hearing before the designated magistrate judge. The posted collateral shall be administratively forfeited.

(c) Failure to post collateral

If a defendant does not post the collateral and fails to appear before the designated magistrate judge for trial on the cited petty offense(s), the collateral amount listed for the offense on the Schedule shall be forfeited to the United States. Forfeiture of the collateral shall be tantamount to a finding of guilty. Failure by a defendant to appear to answer an offense for which appearance is mandatory, or an offense that is aggravated, may result in an arrest warrant being issued for the defendant.

(d) Certification of convictions of traffic violations

Either the clerk or the designated magistrate judge shall certify to the proper authority the record of any conviction of a traffic violation, as required by the applicable state statutes.

(e) Arrest

Nothing contained in this Local Rule shall prohibit a law enforcement officer from arresting an offender for committing any offense, including petty offenses for which collateral may be posted and forfeited, and upon arrest, taking the person charged without unnecessary delay before the nearest magistrate judge.

LR Cr P 59.1. General Authority of Magistrate Judges

A magistrate judge is a judicial officer of the district court. A magistrate judge of this district is designated to perform, and may be assigned, any duty allowed by law to be performed by a magistrate judge. Performance of a duty by a magistrate judge will be governed by the applicable provisions of federal statutes and rules, the general procedural rules of this court, and the requirements specified in any order or reference from a district judge. In performing a duty, a magistrate judge may determine preliminary matters; require parties, attorneys, and witnesses to appear; require briefs, proofs, and argument; and conduct any hearing, conference, or other proceeding the magistrate judge deems appropriate.

LR Cr P 59.2. Statutory Duties

Magistrate judges are authorized or specially designated to perform the duties prescribed by 28 U.S.C. § 636, and such other duties as may be assigned by the court or a district judge which are not inconsistent with the Constitution and laws of the United States.

LR Cr P 59.3. Duties under the Federal Rules of Criminal Procedure

Magistrate judges are authorized or specially designated to perform all duties attributed to magistrate judges by the Federal Rules of Criminal Procedure.

L R Cr P 59.4. Miscellaneous Duties

Magistrate judges are also authorized to:

(a) exercise general supervision of criminal calendars, conduct calendar and status calls, conduct hearings, and determine motions to expedite or postpone the trial of cases for the district judges;

(b) conduct pretrial conferences, scheduling conferences, and related pretrial proceedings;

(c) conduct arraignments in criminal cases not triable by a magistrate judge and take not guilty pleas in such cases;

(d) with the consent of the parties, conduct arraignments in criminal cases not triable by a magistrate judge, receive a defendant's guilty plea, and submit proposed findings of fact and recommendations as to whether the presiding district judge should accept the guilty plea, and find the defendant guilty;

(e) impanel grand juries, conduct hearings as to prospective jurors who fail to appear for grand jury duty, determine the qualification of specific grand jurors to participate in the investigation of particular matters, determine motions to quash grand jury subpoenas, and receive grand jury returns;

(f) with the consent of the parties, conduct voir dire and preside over the selection of petit juries;

(g) accept waivers of indictment;

(h) conduct necessary proceedings leading to the potential revocation of probation or supervised release;

(i) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses, or evidence for court proceedings;

(j) order the exoneration or forfeiture of bonds;

(k) conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act, 42 U.S.C. §§ 3401 *et seq.*;

(l) order the examination of a defendant to determine his or her mental competence to understand the nature and consequences of the proceeding against the defendant or to assist properly in his or her defense, and conduct hearings on a defendant's mental competence, and to determine if a defendant is presently suffering from a mental disease or defect which would give rise to the defense of insanity, or which is inconsistent with the mental state required for the offense charged, all as provided in 18 U.S.C. § 4241 *et seq.*;

(m) supervise proceedings conducted pursuant to letters rogatory as provided in 28 U.S.C. § 1782(a);

(n) issue orders of withdrawal of funds from the court registry pursuant to 28 U.S.C. § 2042;

(o) conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

(p) issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States; and

(q) serve with designated committees or other judicial officers, participate in promulgation of local rules and procedures, administration of the forfeiture of collateral system, and other functions of court governance as approved by the Chief Judge.

LR Cr P 59.5. Assignment of Matters to Magistrate Judges by Division

To the extent not provided for in these Local Rules and the Federal Rules of Criminal Procedure, criminal cases shall be assigned to the magistrate judge for the division in which the alleged offense(s) occurred. In the case of offense(s) which allegedly occurred in more than 1 division, the case shall be assigned to the magistrate judge for the division in which the majority of the allegedly criminal conduct occurred.

LR Cr P 59.6. Other Duties Assigned and Matters Referred

Individual district judges may, in their discretion, assign or request magistrate judges to perform such other duties as are not inconsistent with the Constitution and laws of the United States, including but not limited to conducting hearings, including evidentiary hearings, and submitting proposed findings of fact and recommendations for the disposition of motions to dismiss or quash an indictment or information, and to suppress evidence.